

5 **REMARKS****Paragraphs 1 and 2 of the Office Action**

Claims 1, 3-8 are rejected under 35 USC §102(b) as being anticipated by Dumenigo. Claims 2 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable  
10 over Dumenigo in view of Walton et al.

Applicant's device includes a hinged lid in order to keep odors from cloths within the container and also to keep a more tidy appearance. It is respectfully submitted to the Examiner that while Dumenigo and Walto could have been combined, there must be support within those references to warrant that combination. That one may argue that the  
15 prior art is capable of being modified to achieve a claimed structure does not by itself make the claimed structure obvious--there must be a motivation provided by the prior art, and that motivation is totally lacking in the reference.

The examiner finds the claimed shape would have been obvious urging that (our emphasis) "it is obvious for one skilled in the art to form each hook base of any  
20 desired shape \*\*\* since *this is within the capabilities of such a person.*" Thus, the examiner equates that which is within the capabilities of one skilled in the art with obviousness. Such is not the law. There is nothing in the statutes or the case law which makes "that which is within the capabilities of one skilled in the art" synonymous with obviousness.

25 The examiner provides no reason why, absent the instant disclosure, one of ordinary skill in the art would be motivated to change the shape of the coil hooks of Hancock or the German patent and we can conceive of no reason.

Ex parte Gerlach and Wocner, 212 USPQ 471 (PTO Bd. App. 1980) (emphasis in  
30 original). That there is no motivation is found within the function and structure of Dumenigo. Dumenigo is adapted for holding a sponge above a quantity of water located in a housing. When a person desires to add some moisture to the sponge, the sponge is pushed downward into the water. Were a lid to be attached to Dumenigo, Dumenigo would not function properly. In particular, the sponge would become saturated with  
35 water. Also, the sponge would not dry out properly and would form a body well suited for the growing of mold. Finally, the sponge would prevent the lid from closing properly. Since the combination would be detrimental to Dumenigo, there can be no support found within the prior art support such a combination.

5. For these reasons, it is believed that the remaining claims are in allowable form and the application respectfully requests withdrawal of the rejection.


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**CONCLUSION**

10 In light of the foregoing amendments and remarks, early consideration and  
allowance of this application are most courteously solicited.

Respectfully submitted,

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Sean A. Kaufhold (Reg. No. 46,820)  
P.O. Box 131447  
Carlsbad, CA 92013  
(760) 470-3368 FAX (760) 736-8449

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